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IN THE
Supreme Court of the United States

OCTOBER TERM, 1942

No. 714

PEOPLE OF PUERTO RICO,
Petitioner,

VS.

UNITED STATES OF AMERICA,
GONZALEZ HERMANOS, and
MARTINEZ & Co., S. EN C.,
Respondents.

No. 715

PEOPLE OF PUERTO RICO,
Petitioner,

VS.

UNITED STATES OF AMERICA,
ARTURO BRAVO Y NIEVES and
CRISTINA ACEVEDO BARRETO, HIS WIFE,
Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE CIRCUIT COURT
OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

*To the Honorable, the Chief Justice, and the Associate
Justices of the Supreme Court of the United States:*

Petitioner, The People of Puerto Rico, prays writs of certiorari to review the judgments in the above-entitled companion cases of the Circuit Court of Appeals for the First Circuit, November 6, 1942 [131 F. (2d) 151; Advance

Sheets], affirming orders of the District Court of the United States for Puerto Rico in each case.

STATEMENT

These two cases each present the same single question on substantially identical facts. Despite their titles they present no real controversy between the federal and the insular governments. The question in each case is simply whether insular real property taxes assessed on January 15, 1941, for the fiscal year of 1941-1942 [fiscal year beginning July 1, 1941, under the insular laws] are liens to be paid out of moneys deposited by the federal government upon declarations of taking in condemnation proceedings instituted between January 15 and July 1. Both cases came up from the same court, the federal District Court for Puerto Rico; they were briefed and argued together in the Circuit Court of Appeals; and were disposed of by that court in a single opinion. Permission is, therefore, requested to present them here in this single petition for certiorari and supporting brief.

In each case a declaration of taking was filed by the federal government and a deposit of estimated compensation was made; in one [No. 714; No. 3770, C.C.A.] a judgment of condemnation was entered February 24, 1941 (R. 12); and in the other [No. 715; No. 3771, C.C.A.] May 26, 1941 (R. 6). In each, property taxes had been paid for the fiscal year ending June 30, 1941, and previous years; and in each the People of Puerto Rico filed a claim for payment, out of the deposited moneys, of the property taxes assessed on January 15, 1941, for the 1941-1942 fiscal year beginning July 1, 1941. In No. 714 [No. 3770, C.C.A.] the amount of estimated compensation was \$2,982.60, and the amount of insular taxes claimed was \$7,303.44 (R. 13, 15). In No. 715 [No. 3771, C.C.A.] the estimated amount of compensation was \$1,776.50, and the amount of taxes claimed \$19.84 (R. 7, 9).

The sole controversy lies between the individual respon-

dents, the former owners of the property in each case, and the insular government, with respect to whether or not the insular property taxes assessed on January 15 for the ensuing fiscal year had become liens on the property at the times of the institution of the respective condemnation proceedings [February 24 and May 26], and therefore payable to the insular Treasury out of the deposited amounts of estimated compensation.

The District Court,—affirmed by the Circuit Court of Appeals,—ruled that these taxes had not yet become liens, and would not until the first installment became payable under the insular statutes on July 1; and ordered the moneys paid over to the former landowners. The People of Puerto Rico believes that ruling wrong; that, under the insular statutes, the tax lien attaches immediately upon the assessment of the property taxes as of January 15; and, therefore, in these cases, attached before the institution of the condemnation proceedings begun in February and May, respectively. Hence this petition.

None of the respondents,—neither the federal government nor any of the condemnees,—~~appeared or~~ filed any brief in the Circuit Court of Appeals.

QUESTION PRESENTED

As above indicated, the single question here is:

At what date, in each year, does the insular government tax lien for real property taxes attach to the land? Is it (a) upon the making of the tax assessment, January 15; or is it (b) not until the date (July 1) when the first installment of the tax becomes actually payable in ordinary course?

The answer to that question lies in the solution of an apparent conflict between the provisions of different Puerto Rican statutes,—on the one hand of the Mortgage Law [WHICH GRANTS THE LIEN (Art. 168), and also provides (Art. 218) for its priority] and of the Civil Code [providing for its priority], both of which contemplate a lien to secure [in addition to the preceding three years] “the cur-

rent unpaid annual assessment”¹ or “the current annual assessment, unpaid”,² “the current unpaid annual assessments”,³—and, on the other hand, of the Political Code which recognizes priority for the lien [in addition to the three prior years] only for “The *tax that is assessed for the current fiscal year*”⁴ (*italics supplied*).

Since, under the Puerto Rican statutes, the insular government’s “fiscal year” [like that of the federal government] begins on July 1 and runs until the following June 30,⁵ whereas the annual assessment of real property for taxation is made on January 15,⁶ there is plainly a very marked difference, on the face of it, between the dates of the arising of a lien securing “the current unpaid annual assessment” [Mortgage Law, Civil Code, *supra*], and of one securing only the tax “assessed for the current fiscal year” [Political Code, *supra*]. The tax that is assessed on January 15 is not the tax for the then current fiscal year, which had begun on the preceding July 1; but is the tax for the succeeding fiscal year beginning on the following July 1 (nearly six months later), and is to become actually payable, not immediately upon its assessment, but, instead, one-half of it on the following July 1, nearly six months after its assessment, and the other half on the following January 1, nearly one year after its assessment. For example, in the present cases, the taxes assessed in January, 1941, were not for the then “current fiscal year”, which had begun more than six months earlier, on July 1, 1940, but were those assessed for the succeeding fiscal year of 1941-1942, to become actually payable,

¹ Mortgage Law, Arts. 168, 218; *infra*, p. 27.

² Civil Code (Ed. 1930), Sec. 1823; *infra*, pp. 27-28.

³ *Ibid*, Sec. 1824; *infra*, p. 28.

⁴ Political Code, Sec. 315; *infra*, p. 29.

⁵ *Ibid*, Sec. 314: “and said assessment book shall * * * constitute the assessment of property for purposes of taxation for the fiscal year beginning on the first day of July.”

⁶ Political Code, Sec. 298; and “No change shall be made in the assessment of any property during any fiscal year because of its transfer or other alienation”, *ib.*, Sec. 324; *infra*, pp. 28-29; 29.

one-half on July 1, 1941, and the other half not until January 1, 1942.

It follows, therefore, that, as above stated, there is, on the face of it, a very great difference between the lien provided by the Mortgage Law and the Civil Code to secure "the current unpaid annual assessment" [which manifestly arises as soon as the tax is assessed, and protects it], and the priority recognized by the Political Code only for "*The tax that is assessed for the current fiscal year*" (*italics supplied*), which, on its face, does not appear to relate to the tax when it is "assessed" at all, but only to that assessed a year earlier,—that is to say, for example, in the present cases, during the first six months of 1941, not to the taxes assessed on January 15, 1941, but only to those assessed a year earlier on January 15, 1940,—*thus leaving a gap of nearly six months*,—[if the Political Code's recognition of its priority were to be considered as the sole "grant" of the lien],—until July 1, after the taxes have been completely assessed, before they would be protected by the lien.

POSITION OF THE PEOPLE OF PUERTO RICO

The People of Puerto Rico [the insular government] believes that it was not the purpose of the Legislature to leave such an unprotected gap, nor was that the true intent of the Political Code. *The Mortgage Law, creating the tax lien* immediately upon the completion of the assessment, embodies the ancient rule inherited from the Spanish law; and the Civil Code, in its latest amendment and re-enactment, repeating its own earlier phraseology, is the latest expression of the legislative will as to its priority. The earlier amendment of Section 315 of the Political Code deals only with the priority as a "first lien", of the lien already "established" by the Mortgage Law, and does not affect its existence, nor the time that it arises. The Supreme Court of Puerto Rico has held that it was the purpose of the Political Code to do "nothing more than reproduce

substantially the provisions of Articles 168 and 218 of the Mortgage Law''⁷ the Attorney General of Puerto Rico has held that the lien arises immediately upon the completion of the assessment⁸; and, while the Supreme Court of Puerto Rico has never had occasion directly to decide the question, yet it has twice cited the Attorney General's opinion with approval⁹, and it seems quite evident that,

⁷ *Estate of Romero v. Willoughby, Treasurer*, 10 P. R. Rep. 71, 75-76; quoted with approval, reaffirming it, in *Fajardo Sugar Co. v. Domenech, Treasurer*, 45 P. R. Rep. 539, 544; *infra*, p. 18.

⁸ 14 Ops. Atty. Gen. of P. R. 448, 450, January 21, 1930, *arguendo*, as the basis for his conclusion that the *personal liability* of the landowner for the taxes likewise arises, and becomes fixed, immediately upon the completion of the tax assessment of January 15 in each year. [*Quoted, infra*, pp. 20-21].

⁹ *Asociacion de Maestros de Puerto Rico v. Sancho Bonet, Treasurer*, 54 P. R. Dec. 536, 542; *Roig v. Sancho Bonet, Treasurer*, 54 P. R. Dec. 649, 650-651 [SPANISH; official English text not yet published; translations in Appendix II, *infra*, pp. 32-41]. *Confer*, also, *infra*, pp. 18-19. The opinion in the *Asociacion de Maestros* case contains also a statement of the "fundamental reason for the rule and policy prevalent in most of the States of the Union fixing the date for the arising of the tax lien at a point of time anterior to the date when the tax actually becomes payable",—quoting *Cooley on Taxation* and decisions in different States,—and saying (54 P. R. Dec. at pp. 541-542; Appendix II, *infra*, pp. 36-37):

"The necessity of fixing the date, prior to the physical moment of collection, from which the State may be able definitely to calculate its income for the following fiscal year, is obvious * * *. The taxable status of the property should remain unaltered after a fixed point of time anterior to the date for the payment of the tax, in order that the Treasurer may have a fixed basis upon which to float his bonds, to increase or reduce the taxes, etc.

"That is, we think, the fundamental reason for the rule."

whenever it may be called upon directly to decide the question, that Court's opinion will coincide with that of the insular Attorney General,—viz, that the tax lien arises immediately upon the completion of the tax assessment as of January 15, and that any contrary implication from the language of Section 315 of the Political Code is controlled by the provisions of the Mortgage Law and of the Civil Code. No question of priority is here. The tax lien is "established" by Article 168 of the Mortgage Law.

Judge Cooper's contrary opinion in the District Court was apparently rested wholly upon the phraseology of Section 315 of the Political Code, without even noticing any difference whatever between that and the other statutes [*infra*, pp. 13-14, 22]. The Circuit Court of Appeals disposed of the provisions of the Mortgage Law and of the Civil Code briefly, without complete analysis, and manifestly erroneously, as it is believed. Errors in the opinion are analyzed in the supporting brief (*infra*, pp. 14-17).

REASONS FOR GRANTING THE WRITS

The importance to the insular government of the question here presented is obvious. While the insular Supreme Court has never had occasion directly to determine the point of time at which the tax lien for insular property taxes arises; yet, now, under present war conditions, the question has become very important because of frequent federal government condemnations of land in Puerto Rico for Army, Navy, and other federal purposes. The question necessarily arises in every instance where a federal government condemnation case is instituted between January 15 and July 1 in any year; and, necessarily, in all such cases, as here, the decision has to be made by the federal District Court, without opportunity for recourse to the Supreme Court of Puerto Rico or any other local insular court; although such a question of local taxation is peculiarly one of that class of local questions, resting upon

the history and local understanding and interpretation of local statutes [and here, particularly, of statutes, some of which are derived from the ancient Spanish law,—the Mortgage Law and the Civil Code], with respect to which this Court has emphatically held that great deference should be shown to the local courts, State or Territorial, and that, wherever it can at all be avoided, the question should not be decided by a federal court in the first instance, but should be left to decision by the local courts¹⁰; and, particularly with reference to Puerto Rico, whose

“Taxing Acts of Puerto Rico are purely local, and Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a proper and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island.”¹¹

And, in relation to Puerto Rican tax matters, the general legislative policy of the Congress against interference by the federal courts with the levy or collection of insular taxes has been very strongly stated.¹²

Under these circumstances, in cases where as here in a federal condemnation suit (1) the federal District Court has been compelled to proceed and to decide an important question of interpretation of local tax laws, partly derived from ancient Spanish civil law sources; and where (2) because of present war conditions and consequent frequent re-

¹⁰ *Railroad Commission of Texas vs. Pullman Co.*, 312 U. S. 496, 499-500; *Watson vs. Buck*, 313 U. S. 387, 402.

¹¹ *Sancho Bonet, Treasurer v. Yabucoa Sugar Co.*, 306 U. S. 505, 510; *Sancho Bonet, Treasurer v. Texas Co.*, 308 U. S. 463, 470-471. *Confer, Diaz vs. Gonzalez*, 261 U. S. 102, 105-106.

¹² “Butler Act”, Act of March 4, 1927, c. 503, Sec. 7, 44 Stat. 1418, 1421, forbidding maintenance in the federal District Court for Puerto Rico of any suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Puerto Rico.

currence of federal land condemnations in Puerto Rico, the question will often be recurring again in the federal District Court there, without any opportunity for recourse to the insular courts for decision; and where (3) as here the decision of the federal court now affirmed by the Circuit Court of Appeals is at variance with that of the insular Attorney General which has been accepted administratively as the established rule by the local authorities for years and cited with approval by the local insular Supreme Court; and where [although there has been no direct decision on the point by the insular Supreme Court] it is likewise quite manifest that (4) that Court's opinion would be in accord with that of the local Attorney General and with the local administrative practice and understanding,—with which the decision of the federal District Court is here in conflict;—and where (5) the local understanding and interpretation of their local statutes, as has been pointed out by the insular Supreme Court¹³, is in harmony with the general practice in the States of having the tax lien attach at some point of time anterior to the date when the tax actually becomes payable; and where, also (6) the question has never before been decided by this Court;—in such a case as this,—it is urgently submitted by the insular government,—the question should be examined and decided by this Court.

Your petitioner, The People of Puerto Rico, therefore, respectfully requests that this petition be granted.

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

MANUEL RODRIGUEZ RAMOS,
Acting Attorney General of Puerto Rico,
Of Counsel.

¹³ *Asociacion de Maestros* case, *ante*, p. 6 and *infra*, pp. 18-20, 36-39.

BRIEF IN SUPPORT OF PETITION

Opinions Below

The opinions of the insular District Court of San Juan are not officially reported [Case No. 714, No. 3770, C.C.A., "Order Declaring Non-existence of Tax Lien", R. 18; Case No. 715, No. 3771, C.C.A., R. 1-12]. The Circuit Court of Appeals handed down a single opinion covering both cases [Case No. 714, No. 3770, C.C.A., R. 23-26; Case No. 715, No. 3771, C.C.A., R. 17-20]. It appears in 131 F. (2nd) 151 (*Advance Sheets*).

JURISDICTION

The jurisdiction of the Court is invoked under Section 240(a) of the Judicial Code of the United States as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

The judgment of the Circuit Court of Appeals was entered, in each case, on November 6, 1942 [Case No. 714, No. 3770, C.C.A., R. 27. Case No. 715, No. 3771, C.C.A., R. 21]. The time within which to apply for writs of certiorari in these cases to this Court was extended two days by order of Mr. Justice Frankfurter until and including February 8, 1943. [Case No. 714, No. 3770, C.C.A., R. 28; Case No. 715, No. 3771, C.C.A., R. 22].

QUESTION PRESENTED

The single question here presented is stated in the Petition ("Question Presented", *ante*, pp. 3-5).

STATUTES

The statutes involved are indicated in the Petition (*ante*, pp. 3-5, 5-7), and pertinent parts are set out in Appendix I (*infra*, pp. 27-31). Those of primary importance here are Articles 168 and 218 of the insular Mortgage Law, and Sections 1823 and 1824 of the Civil Code, together with Section 315 of the Political Code,—[all taken in connection with

Sections 295 and 298 of the Political Code directing the assessment of real property for tax purposes on January 15 in each year (Appendix I, *infra*, pp. 28-29) and other sections of the Political Code (Appendix I, *infra*, pp. 28-30].

The provisions of Articles 168 and 218 of the Mortgage Law, Sections 1823 and 1824 of the Civil Code, and Section 315 of the Political Code, upon which the cases chiefly turn, are the following [*English text; Spanish text in Appendix I, infra*, pp. 30-31].

MORTGAGE LAW, Arts. 168 and 218 (Appendix I, *infra*, p. 27):

"Art. 168. A statutory mortgage is established:

"

"5 (*As amended by act of March 14, 1907, p. 330*). In favor of The People of Porto Rico and the corresponding municipality on the property of the taxpayers for the amount of the taxes of the *three annual assessments and the current unpaid annual assessment* of the taxes which burden same." (*Italics supplied*)

"Art. 218. (*As amended by act of Mar. 14, 1907, p. 330*). The People of Porto Rico and the corresponding municipality shall be preferred to any other creditor in the recovery of taxes of the *last three annual assessments and the current unpaid annual assessment* which burden the personal property." (*Italics supplied*)

CIVIL CODE [Edition of 1930; Appendix I, *infra*, pp. 27-28]:

"Section 1823.—(*Section 1824, Civil Code of 1902, as amended by act of March 10, 1910, page 124, and act of March 9, 1911, page 155.*) With regard to certain real property and rights on realty of the debtor, the following shall have preference:

1. Credits in favor of The People of Porto Rico or of the corresponding municipality with regard to the property of the taxpayers for the amounts of the *last three annual assessments and the current annual assessment, unpaid*, of the taxes which burden the same. (*Italics supplied*)

"Section 1824.—(*Section 1825, Civil Code of 1902, as amended by act of March 10, 1910, page 125, and act of March 9, 1911, page 155.*) With regard to all other personal and real property of the debtor, preference shall be given to:

"1. Credits in favor of The People of Porto Rico and of the corresponding municipality for the taxes of the last three annual assessments due and the current unpaid annual assessment which are not covered by paragraph one of the preceding section." (*Italics supplied*)

POLITICAL CODE [approved March 1, 1902; Appendix I, *infra*, p. 29]:

"Sec. 315. (*As amended by act of Mar. 14, 1907, at p. 338*). That it shall be the duty of the assessor in making the assessment * * *. *The tax that is assessed for the current fiscal year, and for the three prior fiscal years, against each piece or parcel of real property, * * * shall constitute the first lien thereon, * * *.*" (*Italics supplied*).

STATEMENT

A statement of these cases indicating how the question here arises is in the Petition ("Statement", *ante*, pp. 2-3).

SPECIFICATION OF ERRORS TO BE URGED

These are indicated in the Petition under the headings "Statement" (last two paragraphs), "Question Presented", "Position of The People of Puerto Rico", and "Reasons for Granting the Writs" (*ante*, pp. 3, 3-5, 5-7, and 7-9).

SUMMARY OF ARGUMENT

The argument is summarized under the heading "Position of The People of Puerto Rico" (*ante*, pp. 5-7), together with what is said under the next succeeding headings here, "Decision of the District Court" (*infra*, pp. 13-14) and "Opinion of the Circuit Court of Appeals

(*infra*, pp. 14-17), and under the next following headings, "Prior Decisions of the Supreme Court of Puerto Rico" (*infra*, pp. 17-19) and "Opinion of the Attorney General of Puerto Rico" (*infra*, pp. 20-21).

DECISION OF THE DISTRICT COURT

The grounds of the decisions of the District Court are the same in both cases (No. 714, No. 3770, C.C.A., R. 18; No. 715, No. 3771, C.C.A., R. 10-12). No formal opinion of the District Court appears in either record, but No. 715 (No. 3771, C.C.A.) although begun later in point of time was reached earlier for decision by the District Court, and in its judgment order, November 24, 1941 ["Order for Delivery of Money", R. 10-12 in that case, which was the District Court's "No. 1827"], that court says (R. 11):

"Whereas, besides the liens for inheritance taxes, * * * the only tax lien existing in Puerto Rico by express statutory provision is *limited by Section 315 of the Political Code, 1823 of the Civil Code and 168 of the Mortgage Law* to the taxes assessed for the current fiscal year and for the three prior fiscal years." (*Italics supplied*)

And the decision of the other case [Case No. 714, No. 3770, C.C.A., the District Court's "No. 1393", "Order Declaring Non-existence of Tax Lien", January 22, 1942, R. 18], simply follows that first decision, reciting that it is placed upon the same grounds, *viz*:

"that prior to July 1 of each year no lien attaches respecting the taxes assessed on the preceding January 15 for the fiscal year commencing on July 1, and that until such lien attaches, the condemnees, as owners of record of the properties so assessed, are personally liable to The People of Puerto Rico for such taxes, but no compensation can be awarded to the latter for its personal credit against the condemnees since the same does not constitute a compensable property interest within a condemnation proceeding."

It will be observed that the District Court does not discuss, in any way, the apparent differences between the Mortgage Law and the Civil Code on the one hand and Section 315 of the Political Code on the other hand; indeed, —as is indicated by the italicized portions above, of the quotation from its order of November 24, 1941 (R. 11, supra) in Case No. 715 (No. 3771, C.C.A.; ante, p. 13), it apparently did not even observe that any such differences existed; or at any rate wholly ignored them.

OPINION OF THE CIRCUIT COURT OF APPEALS

The gist of the opinion of the Circuit Court of Appeals is (Case No. 714, No. 3770, C.C.A., R. 26; Case No. 715, No. 3771, C.C.A., R. 20; 131 F. (2d) at p. 152) that “it is contended” on behalf of the People of Puerto Rico:

“that certain provisions of the Mortgage Law and of the Civil Code not only conflict with, but also control, the above provisions of the Political Code and give a lien for taxes immediately upon the making of the assessment on January 15 of each year. We do not agree.

The statutory provisions relied upon, (§ 168 (5) and §218 of the Mortgage Law, Rev. Stats. and Codes of P.R. § 6852 and § 6902); and Civil Code, Ed. of 1930, §§ 1823, 1824) all deal with the priority of tax liens over liens created by mortgages, judgments, etc., not to the time when liens for taxes arise, and furthermore they give priority only to liens for taxes which are unpaid, and admittedly there were no unpaid taxes due on the respective parcels of property at the time when they were condemned. We fail to see the pertinence of any of the statutory provisions last cited. The most that can be said is that they are ambiguous, but they are susceptible of a construction harmonizing with the admittedly unambiguous provisions of the Political Code. It is not lightly to be assumed that the legislature blundered into enacting flatly contradictory provisions in the Political and Civil Codes.”

ERRORS OF THE CIRCUIT COURT OF APPEALS. The foregoing quotation indicates that the opinion misunderstands, or fails completely to analyze, the pertinent provisions of the Mortgage Law and of the Civil Code, in at least two salient respects. (SEE ALSO *infra*, "Point III-B", pp. 25-26).

First. The opinion says as above quoted that, "The statutory provisions relied upon" (Articles 168 and 218 of the Mortgage Law and Sections 1823 and 1824 of the Civil Code):

"all deal with the priority of tax liens over liens created by mortgages, judgments, etc., not to the time when liens for taxes arise". (Italics supplied)

This apparently wholly ignores the express provision of Article 168 of the Mortgage Law, directly creating the lien, [and not dealing at all with any question of relative priority]. That section provides (ante, p. 11; Appendix I, infra, p. 27):

"Art. 168. A statutory mortgage is established:

"1. In favor of married women • • •

"5. (As amended by act of March 14, 1907, p. 330). In favor of the People of Porto Rico and the corresponding municipality on the property of the taxpayers for the amount of the taxes of the three annual assessments and the current unpaid annual assessment of the taxes which burden same". (Italics supplied)

Article 218 of the Mortgage Law and Sections 1823 and 1824 of the Civil Code deal with relative priorities of the liens, but Section 168 of the Mortgage Law constitutes the direct creation of the tax lien.¹⁴

¹⁴ And it is the Mortgage Law which the Supreme Court of Puerto Rico has said it was the purpose of the Political Code to do "nothing more than reproduce"; not change in any way. *Romero v. Willoughby*, followed in *Fajardo Sugar Co. v. Domenech*, *supra* (ante, pp. 5-6 and *infra*, p. 18,—where, also, it is pointed out that it is the Mortgage Law (Art. 168) which "grants" the "legal mortgage in favor of the State" (quoted, *infra*, p. 18).

Second. The Circuit Court of Appeals opinion also says, as above quoted, of these provisions of the Mortgage Law and the Civil Code, that.

“furthermore they give priority only to liens for *taxes* which are unpaid, and admittedly there were no unpaid taxes *due* on the respective parcels of property at the time when they were condemned.” (*Italics supplied*)

If by the word “taxes”¹⁵ in the first clause of this statement the opinion intends to designate only taxes already “due”, as appears to be indicated by the observation made in the second clause of the statement that there were no “unpaid taxes due” at the time of the institution of the condemnation proceedings, then there appears to be here a plain misunderstanding of the provisions, both of the Mortgage Law and of the Civil Code, each of which alike speaks, —not of “taxes” nor of “taxes due”, but on the contrary, —alike in the Spanish and the English text,¹⁶—of “the current unpaid annual assessment”,¹⁷—which certainly does not necessarily mean only “taxes due” and already payable, but plainly includes as well taxes which have been completely assessed on January 15, and for which the liability of the landowner on that date has become definitely fixed, but which may not yet be actually payable.

Third. From the foregoing it appears clear that the opinion of the Circuit Court of Appeals was in error in saying that “the most that can be said” is that these provisions of the Mortgage Law and of the Civil Code “are ambiguous”, or that they are “susceptible of a construction

¹⁵ Italicized by us, above.

¹⁶ *Ante*, pp. 11-12; *infra*, Appendix I, pp. 27-28, 30-31. Spanish, “de las tres últimas anualidades, y la corriente no pagada”.

¹⁷ Mortgage Law, Arts. 168 and 218; Civil Code, Secs. 1823 and 1824; all alike in uniform phraseology; Appendix I, *infra*, pp. 27-28; 30-31.

harmonizing" with that of Section 315 of the Political Code as it was construed by the District Court, or that the settled administrative construction of these provisions by the insular authorities for which we are here contending is in any way "lightly" assuming that the legislature "blundered" into enacting contradictory provisions.

To the contrary it is plain that the provisions of the Mortgage Law and of the Civil Code are perfectly plain and unambiguous. They represent the ancient Spanish law and likewise the most recent expression of the legislative will (*infra*, Point II-B, p. 23). The Political Code, coming from another source, enacted in 1902 and last amended in 1907, while intended to harmonize with them and, as the insular Supreme Court has said, to do "nothing more than reproduce" the provisions of the Mortgage Law, apparently did not quite do so; and in the respect here in question does not quite harmonize with them, as the Legislature undoubtedly intended that it should. Such a discrepancy in welding together statutes and legal concepts coming from different sources is wholly understandable.

But in any event, *it is the Mortgage Law which "establishes" the lien* [Art. 168], and controls as to the date it arises, regardless of any question as to when it becomes a "first lien" under the wording of Section 315 of the Political Code.

PRIOR DECISIONS OF THE SUPREME COURT OF PUERTO RICO

The Supreme Court of Puerto Rico appears not directly to have decided at what point of time the tax lien for real property taxes arises,—whether upon the making of the assessment or not until July 1st when the first installment of the tax falls due. It has, however, held that, immediately upon the making of the assessment, the person who was the landowner on the tax assessment date, January 15, becomes personally liable to the insular government for the taxes, and so remains until they are paid, regardless of any

changes in the ownership of the land. *Asociación de Maestros v. Sancho Bonet, Treasurer*, 54 Dec. P. R. [Spanish edition; not yet in English] 536, 541-544; *Roig v. Sancho Bonet, Treasurer*, 54 Dec. P. R. [Spanish edition] 649, 650-651.¹⁸

With reference to the relationship to each other of the above quoted provisions of the Political Code and of the Mortgage Law and the Civil Code, the Supreme Court of Puerto Rico has said in *Fajardo Sugar Co. v. Domenech, Treasurer*, 45 P. R. Rep. [English edition] 539, 544, quoting and following its own earlier decision in *Estate of Romero v. Willoughby, Treasurer*, 10 P. R. Rep. 71, 75-76:

*"In this the Political Code does nothing more than reproduce substantially the provisions of articles 168 and 218 of the Mortgage Law in force in this Island, the first of which grants an implied legal mortgage in favor of the State, * * * ; and the second—that is, article 218—provides that the State, province or towns shall be preferred to any other creditor in the recovery of one year's taxes on the realty. These provisions are also reproduced by section 1824 of the new Civil Code, which agrees in every respect with article 1923 of the former Code, which provides, with regard to determined real property and property rights of the debtor, that credits in favor of The People of Porto Rico, with regard to the property of taxpayers, for the amounts of the last annual assessments, due and not paid, which burden the same, shall be preferred in the first place."* (*Italics supplied*)

As to general principles concerning the date upon which the tax lien arises, the Supreme Court of Puerto Rico has said in the case of *Asociación de Maestros vs. Sancho Bonet, Treasurer, supra*, 54 Dec. P. R. 536, 541-542. [Translation ours; Appendix II, *infra*, pp. 36-37]:

"Article 298 of the Political Code provides that real property is to be assessed 'to the person who is either

¹⁸ English translations in Appendix II, *infra*, pp. 32-41.

the owner or in possession thereof on the fifteenth day of January.'

"Although we have not been able to find any specific statutory provision nor any local decision concerning the moment at which for the first time there arises in this jurisdiction the responsibility for the payment of a tax on real property, the uniform decisions of various states of the Union have expressed a very definite criterion. *The date on which the assessment of property for tax purposes becomes complete appears to be accepted by the majority as determining such responsibility.*" [*Italics supplied*]

"The necessity of fixing a date, prior to the physical moment of collection, from which the state may be able definitely to calculate its income for the following fiscal year, is obvious. It takes time to prepare the assessment rolls for the properties, the schedules, and the tax receipts. The taxable status of the property should remain unaltered after a fixed point of time anterior to the date for the payment of the tax, in order that the Treasurer may have a fixed basis upon which to float his bonds, to increase or reduce the taxes, etc.

"That is, we think, the fundamental reason for the rule. Besides that, the collection would be uncertain and impracticable if the state had to allow exemptions, following changes to new purchasers or to distribute the taxes among subsequent owners during the same year.

"In cases of sales to purchasers who in themselves are exempt from the payment of taxes it has resulted that the owner of the property at the time of the assessment remains personally responsible for the payment of the taxes imposed on the property. *The Attorney General of Porto Rico at one time handed down an opinion to that effect.*" [*Italics supplied*] "14 Ops. Attorneys General [of Puerto Rico] 448.¹⁹ See also *Gloster Lumber Co., Inc. v. Adams County*, 163 So. 541; *Buckout v. City of New York*, 82 App. Div. 218 (N. Y.);

¹⁹ "Taxation—Real property—Personal liability for tax on real property", Opinion No. 77, January 21, 1930; Attorney General Beverley, 14 Ops. Atty. Gen. of Porto Rico, p. 448,—*quoted under the next heading here, infra*, pp. 20-21.

Prytania St. Market Co. v. City of New Orleans, 110 La. 835, 34 So. 797; *Wood v. McCook Waterworks Co. et al.*, 149 N. W. 417; *New Orleans Bank and Trust Co. v. City of New Orleans*, 147 So. 42, 176 La. 946; *City of Oakland v. Whipple*, 39 Cal. 112, and 61 *Corpus Juris* 171, Par. 126."

OPINION OF THE ATTORNEY GENERAL OF PUERTO RICO

With reference to the date when the tax lien arises a former Attorney General of Puerto Rico, the Honorable James R. Beverley, in the opinion²⁰ to which reference was made by the insular Supreme Court in the case last quoted, appears to have *assumed without question that the tax lien arose immediately upon the completion of the making of the assessment*. In dealing with the question whether an owner of property, to whom it was assessed for taxation as of January 15, and who had sold it the following March 31st, remained personally liable to the insular government for the taxes,—and in holding that he did so remain personally liable,—Attorney General Beverley said (14 Ops. Atty. Gen. of P. R., *supra*, 448, 450):

"In reply, I advise you that when taxes have been assessed to the proper person in accordance with section 298 of the Political Code, they become an obligation on the part of the owner of the property to the Government, and while not a debt in the ordinary sense of the term they constitute a debt in the broader meaning of the word. Cooley on Taxation, 4th Ed., Vol. 1, p. 88 ff.; *State v. Georgia Co.*, 17 S. E. 10, 19 L.R.A. 485; section 1056, Civil Code of P.R.

"The obligation to pay the tax is a duty which may be enforced upon the owner of the property. In case of taxes on real property this obligation is secured by a first lien in accordance with section 315 of the Political Code of Porto Rico. *The fact that the real property has*

²⁰ Opinion of January 21, 1930, cited in the next preceding footnote.

*been transferred after the lien attaches*²¹ has no effect either upon the liability of the former owner or upon the state of the lien, unless the statutes so provide; the debt remains on the individual or firm to which the property was properly assessed, *and the lien also remains against the property* regardless of the number of times it may have been transferred. *The Treasurer of Porto Rico*, therefore, in a situation of that kind *may proceed to collect the taxes* either from the former owner to whom the taxes were assessed *or may proceed against the security and sell the same.*" (*Italics supplied*)

ARGUMENT

[RECAPITULATION]

POINT I

The tax lien attaches immediately upon the making of the assessment.

This is the understanding of the Insular Government, although the federal District Court held the contrary in these cases. The uncertainty arises from a variation in the wording in the statutes, the difference between the wording of the Mortgage Law and the Civil Code on the one hand, and that of the Political Code on the other hand.

A.—The question is whether the tax lien attaches to "the current unpaid annual assessment" (Mortgage Law; Civil Code), or to "the tax that is assessed for the current fiscal year" (Political Code).²²

B.—Manifestly, if the text of the Political Code were to be considered as though it stood wholly by itself, and without reference to the other statutes, and were to be considered as the governing statute, then, plainly, it would have to be conceded that the decision of the District Court in these cases is right; because the wording of Section 315 of the

²¹ In that case on March 31; that is to say, after the making of the assessment of January 15, but *before July 1* when the tax became payable.

Political Code, both in English and in Spanish²² is that the

"The tax that is assessed for the current fiscal year, and for the three prior fiscal years" (*Italics supplied*),

is what "*shall constitute the first lien*;" and, plainly, under the insular statutes, on January 15, the assessment date in each year, the then "current fiscal year" is the one which had begun on the preceding July 1 and is running until June 30 of the same year in which the assessment is made; so that, taken literally, this wording of Section 315 of the Political Code,—*if this were the statute that "established" the lien*,—would mean that from the time the assessment is made on January 15, until the expiration of the "then current fiscal year" on the following June 30, the only "first lien" of the government would be that for the taxes assessed a year previously for the "current fiscal year" which had begun the prior July 1,—and for the "three prior fiscal years". In other words, the "first lien" would not be given for the taxes assessed in January, 1941, until after that fiscal year had expired and the new fiscal year had begun the following July.

There would thus be this gap between making the assessment on January 15 and the beginning of the following fiscal year on July 1, during which there would be no existing lien for the taxes assessed on the then current assessment. And that is the decision of the District Court in these cases.

C.—On the other hand, the wording of the Mortgage Law, —*which is the statute which "establishes" the lien* (Art. 168),—and of the Civil Code, which agree with each other, equally plainly gives the lien *immediately upon the making of the assessment* on January 15 of each year, giving it for the "last three annual assessments due and the current un-

²² Spanish text of the pertinent parts of Articles 168 and 218 of the Mortgage Law, and of Sections 1823 and 1824 of the Civil Code, and also of Section 315 of the Political Code, are in Appendix I, (*infra*, pp. 30-31).

paid annual assessment” (Civil Code; Sec. 1824, *supra*).²³

D.—The question is, then, of resolving this apparent difference between the provisions of the Political Code on the one hand, and of the Mortgage Law and the Civil Code on the other hand.²⁴

POINT II

In resolving this question several elements are to be considered.

A.—The Mortgage Law is the statute which directly “established” [Art. 168] the lien, in the first instance.

B.—In so far as there is a difference between the different codes, *the Civil Code is the latest expression of the legislative will.*

Section 315 of the Political Code, in its present form, speaks as from March 14, 1907, the date when it was last amended, as quoted in the appendix (*infra*, pp. 29, 31), by the Legislature’s act of that date; whereas Sections 1823 and 1824 of the Civil Code speak from the dates, three and four years later than that, when that code was amended by the Acts of March 10, 1910 and March 9, 1911; and it was re-published in the edition of 1930 (Appendix I, *infra*, pp. 27-28, 30-31).

C.—The Supreme Court of Puerto Rico has held that it was the purpose of the Legislature in enacting the Political Code to do nothing more than to “reproduce substantially the provisions of Articles 168 and 218 of the Mortgage Law” (*ante*, p. 18); which give the lien upon the “current unpaid annual assessment” as above quoted (*ante*, p. 11, and *infra*, pp. 27, 30).

²³ Mortgage Law: Art. 168, “the three annual assessments and the current unpaid annual assessment”. Art. 218, “the last three annual assessments and the current unpaid annual assessment”.

²⁴ Apparently the District Court did not have its attention fixed on this difference between the provisions of the different statutes. It mentions them as though they were all alike (No. 3771, R. 11; *ante*, pp. 7, 14).

D.—The usual understanding in relation to tax assessments is that the lien arises upon the completion of the making of the assessment. The reasons for this are set out by the insular Supreme Court in the cases already quoted,—the *Asociación de Maestros* case [*ante*, pp. 6, 18-19, and *infra*, Appendix II, pp. 36-39], followed in the *Roig* case, [*ante*, p. 6, and Appendix II, *infra*, pp. 40-41].

E.—Apparently it has been the general understanding among the insular officials that the tax lien arises immediately upon the making of the assessment. This understanding is reflected in the opinion of former Attorney General Beverley, in 1930, above quoted [*ante*, pp. 20-21), in which, without direct discussion of that point, he assumed that to be the rule, as the basis of his opinion of the personal liability of the person who was the owner on January 15, for the taxes.²⁵

F.—In view of all of the foregoing *indicia* it is believed that the rule as stated in the Mortgage Law and in the Civil Code,—rather than that stated in the Political Code,—is the rule which the Supreme Court of Puerto Rico will follow whenever the question comes before it for decision. That rule, clearly, is that the tax lien arises immediately

²⁵ This is the opinion to which the Supreme Court of Puerto Rico referred with approval in the case of *Asociación de Maestros v. Sancho Bonet, Treasurer*, *supra*, 54 Dec. P. R. 536, 541-542, above quoted (*ante*, pp. 18-19), the case in which the court called attention to the fact that (*ante*, p. 19).

“Although we have not been able to find any specific statutory provision nor any local decision concerning the moment at which for the first time there arises in this jurisdiction the responsibility for the payment of a tax on real property, the uniform decisions of various states of the Union have expressed a very definite criterion. The date on which the assessment of property for tax purposes becomes complete appears to be accepted by the majority as determining such responsibility.”

upon the making of the assessment. It is the more reasonable rule, and is the one in harmony both with the usual rules in other jurisdictions and with the reasoning of the Supreme Court of Puerto Rico in the *Asociación de Maestros* case above quoted (*ante*, pp. 18-19). It is accordingly the rule which is believed should be adopted by this court,—both in deference to local opinion, and also because it is plainly correct. [*Confer*, also, *ante*, p. 5, “Position of the People of Puerto Rico”].

POINT III

Errors in the opinion of the Circuit Court of Appeals.

A.—That opinion’s apparent misunderstanding of the pertinent provisions of the Mortgage Law and the Civil Code has already been discussed (*ante*, pp. 14-17).

B.—It fails also to give sufficient weight,—[particularly in its quotation (Case No. 714, R. 25; Case No. 715, R. 19; 131 F. (2d) at p. 152) of one sentence picked out of the insular Supreme Court’s excerpts from the opinion of the Nebraska Supreme Court in *Wood v. McCook Waterworks Co.*, 97 Neb. 215, 149 N.W. 417, L.R.A. 1915C, 125],—to the insular Supreme Court’s plain intimation that, whenever required directly to decide the question, it will agree with the insular Attorney General’s opinion that the tax lien comes into existence immediately upon the completion of the assessment on January 15 in each year.

Taking the opinions of the insular Supreme Court as a whole, both in the *Asociación de Maestros* case and in the following *Roig* case [translations in full, Appendix II, *infra*, 32-39, 39-41], it is plain that the decision of the insular Court in both those cases was, simply, that the fact that there might also be a tax lien in existence on the property was no defense against the owner’s personal liability for the taxes. In other words, that the two,—the tax lien and the owner’s personal liability,—might co-exist simultaneously; that, as was held by the insular Attorney General

in his opinion of January 21, 1930, above quoted (*ante*, pp. 20-21), cited with approval by the insular Supreme Court in both those cases (Appendix II, *infra*, pp. 37, 31),—as the Attorney General phrased it (14 Ops. Atty. Gen. of P. R., *supra*, at p. 450; *ante*, p. 21):

“The Treasurer of Porto Rico, therefore, in a situation of that kind may proceed to collect the taxes *either from the former owner to whom the taxes were assessed, or may proceed against the security and sell the same.*”

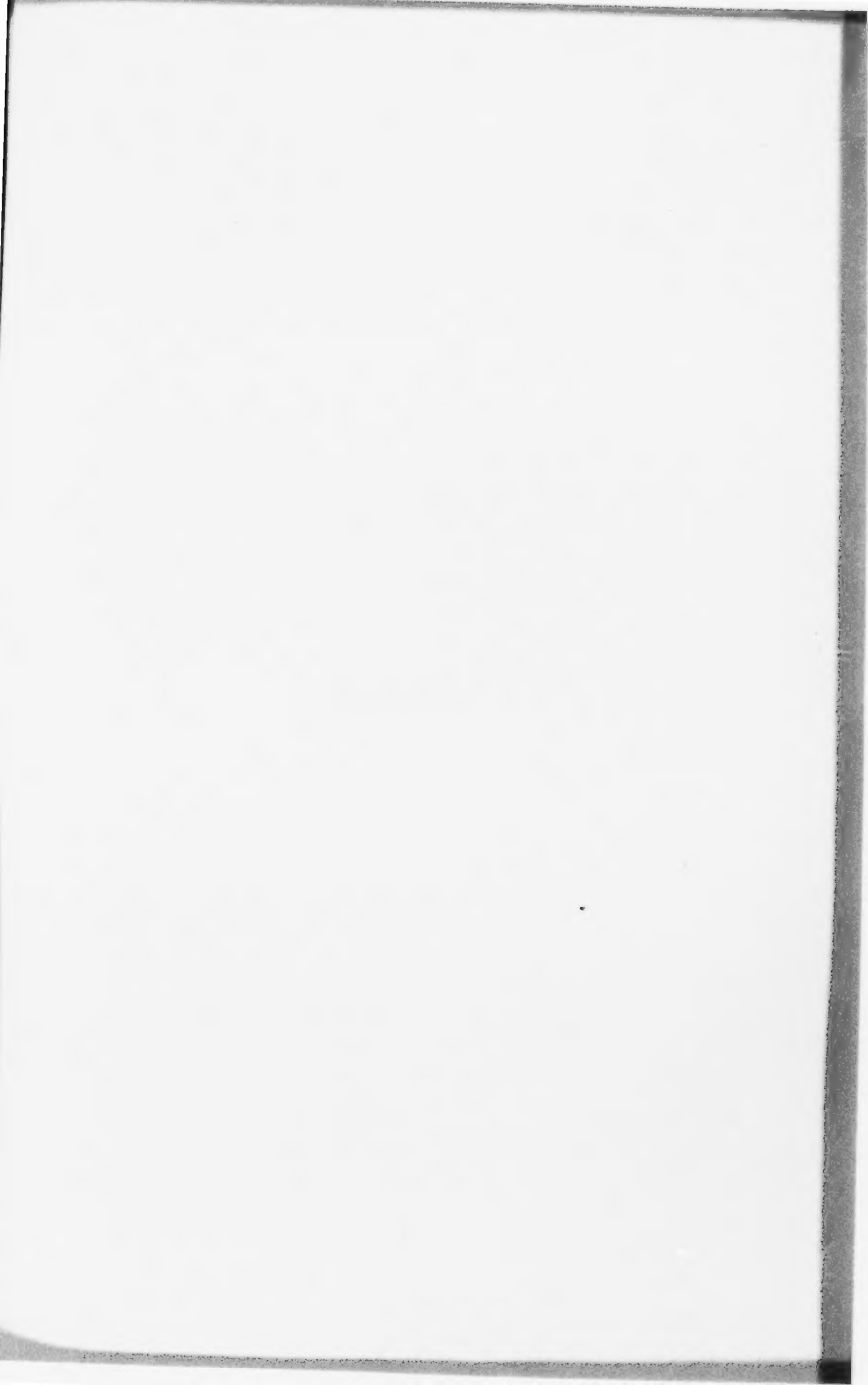
CONCLUSION

The decision of the federal District Court was wrong in each of these cases, as was likewise that of the Circuit Court of Appeals affirming it. They were contrary to what the insular Supreme Court quite clearly would have decided, construing these insular laws. Certiorari should be granted for the reasons pointed out in the Petition (*ante*, pp. 7-9), and those decisions should be reversed and the cases remanded to the District Court with directions to pay the insular government the amounts of these tax claims.

Respectfully submitted,

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

MANUEL RODRIGUEZ RAMOS,
Acting Attorney General of Puerto Rico,
Of Counsel.





APPENDICES

APPENDIX I

Statutory Provisions

Federal:

Butler Act, amending Section 48, Organic Act for Puerto Rico; Act of March 4, 1927, c. 503, 44 Stat. 1418, 1421.

Sec. 7. * * *.

"That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the District Court of the United States for Porto Rico."

Puerto Rico:

Mortgage Law:

Article 168, subdivision 5 [Par. 6852, Comp. of Rev. Stats. and Codes of 1911, p. 1086].

Art. 168. A statutory mortgage is established:

1. In favor of married women * * *.

5. (*As amended by Act of March 14, 1907, p. 330.*) In favor of The People of Porto Rico and the corresponding municipality on the property of the taxpayers for the amount of the taxes of the three annual assessments and the current unpaid annual assessment of the taxes which burden same.

Article 218 [Par. 6902, Comp. of Rev. Stats. and Codes, p. 1090].

Art. 218. (*As amended by act of Mar. 14, 1907, p. 330.*) The People of Porto Rico and the corresponding municipality shall be preferred to any other creditor in the recovery of taxes of the last three annual assessments and the current unpaid annual assessment which burden the personal property.

Civil Code (Ed. of 1930).

Section 1823—(*Section 1824, Civil Code of 1902, as amended by act of March 10, 1910, page 124, and act of March 9, 1911, page 155.*) With regard to certain real

property and rights on realty of the debtor, the following shall have preference:

1. Credits in favor of The People of Porto Rico or of the corresponding municipality with regard to the property of the taxpayers for the amounts of the last three annual assessments and the current annual assessment, unpaid, of the taxes which burden the same.

• • •

Section 1824—(*Section 1825, Civil Code of 1902, as amended by act of March 10, 1910, page 125, and act of March 9, 1911, page 155.*) With regard to all other personal and real property of the debtor preference shall be given to:

Section 1. Credits in favor of The People of Porto Rico and of the corresponding municipality for the taxes of the last three annual assessments due and the current unpaid annual assessments which are not covered by paragraph one of the preceding section.

Political Code (Comp. of Rev. Stats. and Codes, pp. 552, et seq.).

(2947) Sec. 295. (*As amended by act of Sept. 3, 1910, p. 36*) That the assessment of property, as the same appears on the taxroll last prepared, shall, after it has been corrected, amended and revised, as herein provided for, constitute the assessment roll for the next fiscal year. That as soon after January fifteenth of each year as is possible it shall be the duty of the assessor of each assessment district to fill out an assessment schedule showing in detail each separate piece of real property and improvements thereon, and in as great detail as is practicable all personal property subject to taxation within the same municipality belonging on January fifteenth to each taxable person whose property has not been previously assessed or whose property, in the opinion of the assessor, should be revalued or reassessed for purposes of taxation, or the revaluation of which has been requested by the owner thereof or by the municipal authorities of the municipal district in which said property is located, or by any citizen of Porto Rico. • • • (p. 552)

(2950) Sec. 298. (*As amended by act of Sept. 3, 1910, p. 37*) That all real property shall be assessed in the municipality in which the real property lies to the

person who is either the owner or in possession thereof on the fifteenth day of January, and the person appearing of record on the fifteenth day of January shall be held to be the true owner thereof * * *. (pp. 553-554)

(2967) Sec. 315. (*As amended by act of March 14, 1907, p. 338.*) That it shall be the duty of the assessor in making the assessment, or in revising the existing assessment, to list each piece or parcel of real estate separately, and to give each its assessed value, together with a description of it, and the name and address of its owner, insofar as such information can be obtained. Where the real property embraces both land and improvements, the assessed value of the land and of the improvements shall be given separately. The tax that is assessed for the current fiscal year, and for the three prior fiscal years, against each piece or parcel of real property, including any improvements that may be thereon, or that may be subsequently placed thereon, shall constitute the first lien thereon, and shall be prior to all other liens whatsoever on said property, whether the said liens attach before or after the lien of said taxes; * * *. (p. 557)

(2976) Sec. 324 (*As amended by acts of Mar. 10, 1904, p. 178, and Mar. 14, 1907, p. 362*) No change shall be made in the assessment of any property during any fiscal year because of its transfer or other alienation; except that if real estate is divided by sale upon petition for alteration or otherwise after a tax has been levied thereon and such division has been duly recorded in the registrar's office the assessor, at any time before said real estate may have been sold for payment of taxes, upon the written request of the owners of any portion thereof, shall apportion the assessment and the Treasurer of Porto Rico shall apportion said taxes, and the costs and interest accruing thereon, upon the said parcels thereof in proportion to the value of each, and only the portion of said taxes, interests and costs so apportioned upon any such parcel shall continue to be a lien upon it and the owner shall be liable only for the tax apportioned upon the parcel owned, in part or in whole, by him. * * *. (p. 561)

(2982) Sec. 330. (*As amended by act of Mar. 14, 1907, p. 362*) The taxes imposed by section 285 of this

Title shall be payable semiannually in advance upon the first day of July and January of each year. Such taxes shall become delinquent if not paid within sixty days after the date on which the same become due, and the collectors shall collect upon all such delinquent taxes an additional sum of one per-cent of the amount thereof for each month, or fraction thereof, for which said taxes are so delinquent. (p. 563)

(2983) Sec. 331. (As amended by act of Mar. 14, 1907, p. 341) That no demand for taxes shall be necessary, but it shall be the duty of every person subject to taxation to attend at the office of the proper collector and pay his taxes in full, for which purpose notices shall be posted in the most frequented public places of the towns not later than the first day of the month that the said semi-annual tax is to be collected. * * *. (p. 563)

Mortgage Law; Spanish Edition, as printed in Spanish Edition of Rev. Stats. and Codes, 1911.

Article 168, subdivision 5; as amended by Act of March 14, 1907, p. 330.

Se establece hipoteca legal:

1. En favor de las mujeres casadas * * *.

5. En favor de El Pueblo de Puerto Rico y la correspondiente municipalidad, sobre los bienes de los contribuyentes por el importe de las contribuciones de las tres ultimas anualidades, y la corriente no pagada, de los impuestos que graviten sobre ellos.

Articulo 218 (*Enmendado según la ley de 14 de Marzo de 1907, pag. 330*). El Pueblo de Puerto Rico y la correspondiente Municipalidad, tendrán preferencia sobre cualquier otro acreedor para el cobro de las tres últimas anualidades, y la corriente no pagada, que graven a los bienes muebles.

Civil Code, as printed in Spanish Edition of Revised Stats. and Codes, 1911.

Section 1823.—(*Section 1824, Civil Code of 1902, as amended by act of March 10, 1910, page 124, and act of March 9, 1911, page 155.*) Con relacion a determinados bienes inmuebles y derechos reales del deudor, gozan de preferencia:

1. Los creditos a favor de El Pueblo de Puerto Rico,

o de la correspondiente municipalidad, sobre los bienes de los contribuyentes, por el importe de las tres últimas anualidades, y la corriente no pagada, de las contribuciones que graviten sobre ellos.

Section 1824; as amended by Act of March 10, 1910, p. 127.

1. Los créditos a favor de El Pueblo de Puerto Rico, o de la correspondiente municipalidad, sobre los bienes de los contribuyentes, por el importe de las tres últimas anualidades vencidas, y la corriente no pagada, no comprendida en el párrafo numero 1 del artículo anterior.

Political Code; Spanish Edition, Rev. Stat. and Codes, 1911.

Sec. 315. * * * La contribución que se impusiere por el corriente año económico y por los tres años económicos anteriores sobre cada finca o parcela de propiedad inmueble e, inclusive, sobre cualesquiera mejoras que en ella existan o que posteriormente se hicieren en la misma, constituirá el primer gravamen sobre dicha finca or parcela de cualquier naturaleza que fuesen * * *.

APPENDIX II

Translation of Spanish language decisions of the Supreme Court of Puerto Rico. [Our own translation; official English text not yet published.]

Asociacion de Maestros de Puerto Rico, plaintiff and appellee vs. Rafael Sancho Bonet, Treasurer of Puerto Rico, defendant and appellant. Vol. 54, Decisiones de Puerto Rico, p. 536.

No. 7652, submitted: December 14, 1938. Decided: March 24, 1939.

Appeal from Judgment of *Pablo Berga, J.* (San Juan), dismissing a claim for refund of taxes in so far as it relates to the sum paid under protest for the fiscal year 1935-36, tax receipt No. 178; each party to pay its own costs. *Reversed*

Hon. Attorney General B. Fernandez Garcia and C. Andreu Ribas, Assistant Attorney General, attorneys for appellant; Virgilio Brunet, attorney for appellee.

ASSOCIATE JUSTICE WOLF read the court's opinion.

On August 6, 1931, in conformity with express legislative authority, the Commissioner of the Interior sold a parcel of land which measured 880 square meters to the Asociacion de Maestros de Puerto Rico. The sale contained a condition binding the purchaser to construct within the term of five years "a building of two stories adequate for the purpose of the Asociacion, and at a cost of not less than \$50,000 * * *." (See Joint Resolution No. 16 of 1925, laws of that year, page 1019). The condition was complied with afterward, and the building known as the "Templo del Maestro" was formally dedicated during the month of April 1935.

On January 15, 1935, for tax purposes, the Treasurer of Puerto Rico assessed the real estate of the Asociacion, and afterward collected the corresponding tax for the fiscal year 1935-36. The taxpayer claimed that in accordance with article 291 of the Political Code (Revised Statutes of

1911, page 582),¹ the property having become exempt from taxes in April 1935, upon the completion of the Asociacion's building, therefore that in July 1935 no duty accrued to pay the taxes for the following year. In consequence it made the payment under protest and filed the present claim. The Treasurer appealed from the judgment below in favor of the claimant.

It seems expedient to explain that although this appeal involves only the refund of the real estate taxes on this property for the tax year 1935-36, the plaintiff originally tried to recover the taxes for various prior years. The original judgment of the District Court dismissed the claim and it was only upon reconsideration that it ordered the refund of the taxes for the year 1935-36 amounting to \$114.82.

The reasoning of the District Court was as follows:

"The parties submit to the court a motion for reconsideration of the judgment in this case in so far as it denied refund of the tax paid under protest on the real estate described in the complaint for the fiscal year 1935-36, the claimant contending that this tax should be cancelled because in accordance with article 291, clause (e) of the Political Code, both the land and the building were exempt from taxes and since, although the tax was imposed under article 295 of the Political Code on January 15, 1935, nevertheless it did not become payable or become due until the first of July when the fiscal year 1935-36 commenced, in accordance with article 330 of the same code, before which date the building "Templo del Maestro" had been finished and was being utilized as a center of education and culture, and ever since April 1935 had been exempt from the imposition of taxes both on the land and the building under the above cited article 291; and hence that the tax collected for the fiscal year 1935-36 upon that land appears to be contrary to the law and in justice should be refunded."

Clause (e) of article 291 of the Political Code, *supra*,

¹ Page 582 of the Spanish edition; page 551, English edition.

provides [*English text, p. 551, Revised Statutes of 1911*]:

"Sec. 291. (*As amended by act of Mar. 10, 1904, p. 169*). The following property shall be exempted from taxation: * * *

"(e) Every building used and set apart exclusively for religious worship, and the pews and furniture within the same; every building used and set apart for educational, literary, scientific or charitable purposes, and the furniture, appliances and apparatus appurtenant thereto; and every tract of land, not exceeding five cuerdas in extent, upon which such building or buildings is or are situated: *Provided*, That such grounds and buildings are not leased or otherwise used with a view to the pecuniary profit of either the lessor or lessee."

We have no doubt whatever that the building upon being entirely completed and dedicated complied with the conditions of the foregoing article, and therefore became entitled to the exemption herein prescribed. The only question that is before us relates to the determination of the date upon which for the first time the personal responsibility of a taxpayer arises with relation to the taxes for any particular fiscal year, the date after which any changes in the use or ownership of the property will not affect such responsibility.

[1] The appellee cites authorities to the effect that an exemption in the nature of that here under consideration becomes applicable as soon as the construction of a building of a cultural or religious character is initiated. We have examined the authorities cited and we find ourselves compelled to conclude that they do not represent the majority opinion. In 34 A.L.R. 634, at page 672, it is said:

"Land on which buidings to be used for charitable purposes are in the course of erection, or are in good faith contemplated, is generally held not exempt from taxation. *Boston Soc. v. Boston*, (1880) 129 Mass. 178; *Children's Seashore House v. Atlantic City*, (1902) 68 N.J.L. 385, 59 L.R.A. 947, 53 Atl. 399; *Institute of Holy Angels v. Ft. Lee*, (1910) 80 N.J.L. 545, 77 Atl. 1035 . . . (more cases cited . . .)"

It is a principle generally recognized that a statutory exemption from taxes is to be strictly construed.

Article 291, *supra*, clearly exempts only the "*building used and set apart for education, literary, scientific * * ** ; and every tract of land not exceeding five cuerdas in extent, upon which such building or buildings *is or are situated.*" (*Italics ours*). In order to enjoy the privilege, the building must be used and destined for that special purpose. The entire context of the statute is sufficiently clear to destroy the appellee's contention.

[2] The Treasurer points out two errors. He contends first that the court below committed error in reconsidering its original judgment in part, although the motion for reconsideration was not supported by any authorities or principle of law. If it is to be accepted that a court has the power to modify or to set aside its own judgments, *sua sponte*, then there is no reason to criticize its proceeding because of the mere fact that the losing party in asking such modification fails to cite any authorities. It is within the powers of a court to correct anything that in its opinion is an incorrect determination, and even though the authorities might perhaps have fortified the position taken, they were not indispensable. Moreover, in this particular case the claimant stated in his motion for reconsideration the law upon which he based his petition.

[3, 4] The remaining error assigned is in fact important. The Treasurer contends that when real estate is "assessed" in accordance with articles 298, *et seq.* of the Political Code, on January 15 of any fiscal year, the person in whose name it is assessed becomes immediately responsible for the payment of the taxes on the property corresponding to that assessment; that is to say, the taxes for the following fiscal year which begins the first day of July following. Based on these premises the Treasurer contends that whatever change may be made in the ownership or the taxable nature of the property after the 15th day of January, although it may occur before the first day of July when the first tax

payment semester begins, does not affect the responsibility of the owner who was such on January 15th. That owner remains nevertheless responsible for the payment of the whole tax.

In paragraph (F) of the stipulation of facts the parties agree on the following circumstances:

“(F) That on this parcel of ground there had not been built and did not exist any construction whatever upon the date in which the aforementioned tax was imposed.”

The foregoing paragraph apparently contains an admission in favor of the Treasurer. The imposition of a tax ought to follow a valid assessment of property for tax purposes. Inasmuch as the taxpayer does not raise any question as to the validity of the assessment of the property nor with respect to its completion, we are obliged to conclude that both those requisites were complied with.

Article 298 of the Political Code provides that real property is to be assessed “to the person who is either the owner or in possession thereof on the fifteenth day of January.”

Although we have not been able to find any specific statutory provision nor any local decision concerning the moment at which for the first time there arises in this jurisdiction the responsibility for the payment of a tax on real property, the uniform decisions of various states of the Union have expressed a very definite criterion. The date on which the assessment of property for tax purposes becomes complete appears to be accepted by the majority as determining such responsibility.

The necessity of fixing a date, prior to the physical moment of collection, from which the state may be able definitely to calculate its income for the following fiscal year, is obvious. It takes time to prepare the assessment rolls for the properties, the schedules, and the tax receipts. The taxable status of the property should remain unaltered after a fixed point of time anterior to the date for the

payment of the tax, in order that the Treasurer may have a fixed basis upon which to float his bonds, to increase or reduce the taxes, etc.

That is, we think, the fundamental reason for the rule. Besides that, the collection would be uncertain and impracticable if the state had to allow exemptions, following changes to new purchasers or to distribute the taxes among subsequent owners during the same year.

In cases of sales to purchasers who in themselves are exempt from the payment of taxes it has resulted that the owner of the property at the time of the assessment remains personally responsible for the payment of the taxes imposed on the property. The Attorney General of Porto Rico at one time handed down an opinion to that effect. 14 Ops. Attorneys General [of Puerto Rico] 448. See also *Gloster Lumber Co., Inc. v. Adams County*, 163 So. 541; *Buckout v. City of New York*, 82 App. Div. 218 (N. Y.); *Prytania St. Market Co. v. City of New Orleans*, 110 La. 835, 34 So. 797; *Wood v. McCook Waterworks Co., et al.*, 149 N. W. 417; *New Orleans Bank and Trust Co. v. City of New Orleans*, 147 So. 42, 176 La. 946; *City of Oakland v. Whipple*, 39 Cal. 112, and 61 *Corpus Juris* 171, Par. 126.

In the *Wood* case, *supra*, it is said:

“Did the sale of the property on July 1st to the city cancel defendant’s liability upon the assessment because of the fact that after the property passed to the ownership of the city it thereafter would not be liable to taxation? We think the answer to this question must be adverse to defendant. The case is not different from what it would be if, after defendant had filed its schedule and the assessor had made the assessment, and while still owning the property, it had changed the use of it to a purpose which would relieve it from taxation. Such a change would not relieve it from liability. *New York v. Commissioners*, 104 U. S. 466, 26 L. Ed. 632.”

In another place the court said:

“Suppose defendant, on July 1st, had sold its property which had been assessed, and with the money

obtained from the sale had purchased United States bonds: Could it have escaped the payment of taxes? Clearly not. The fact that the assessment and the tax subsequently levied thereon had not become a lien upon the property, so as to make a purchaser thereof liable for the tax, is entirely immaterial."

The reasons for fixing a date from which there attaches personal responsibility are expressed in the following way by Judge Cooley in his brilliant work on taxation:

"Time for assessment. Assessments are made periodically, and in many of the states every year. When an annual assessment is required, if the officer merely copies for one year the roll for the preceding year, the assessment will be invalid. The customary regulation is that the assessment shall be made or completed on a certain day, or that it shall be made as of a certain day. This fixes the liability of persons and property to taxation for the year. There are some inconveniences and inequalities resulting from this, but some regulation of the kind is indispensable. A force of tax officers cannot be kept employed for the year in watching the transfers of property, the movements of persons, and vicissitudes of business, in order to equalize the charges upon them; periodical assessments, if they produce injustice in one case, may correct it in the next, and on the whole are likely to be fair. At any rate, they constitute the best regulation the law can establish. 'In the imposition of taxes, exact and critical justice and equality are absolutely unattainable. If we attempt it, we might have to divide one year's tax upon a given article of property among a dozen different individuals who owned it at different times during the year, and then be almost as far from the desired end as when we started. The proposition is utopian. The legislature must adopt some practicable system;' and this practicable system is found to be the one which has been indicated. Every person is therefore to be taxed for the year upon his personalty, estimated as of the time of the assessment, and every parcel of real estate according to its value as set down in the proper list or roll. Changes in the ownership of property, or in the value after the period of assessment,

cannot be taken notice of in taxation until the time for a new assessment has arrived. This is the general rule."—Cooley on Taxation, Vol. 3, page 2138, section 1062.

Since in the present case it is admitted that the tax had been imposed before the construction of the building on the property, we are not here faced with the difficulty of determining when the assessment was completed.

Under these circumstances, and in view of the authorities cited, the judgment of the lower court must be reversed.

Presiding Justice del Toro took no part in this decision.

Antonio A. Roig, plaintiff and appellee vs. Rafael Sancho Bonet, Treasurer of Puerto Rico, defendant and appellant. Vol. 54, Decisiones de Puerto Rico, p. 649.

No. 7645, submitted: February 10, 1939. Decided: April 21, 1939.

Appeal from Judgment of *R. Arjona Siaca, J.* (Humacao), sustaining a claim for the refund of taxes paid under protest, without costs. *Reversed*, without costs.

Hon. Attorney General B. Fernandez Garcia and *M. Rodriguez Ramos, Assistant Attorney General*, attorneys for the appellant; *Francisco Gonzales Fagundo*, attorney for the appelle.

ASSOCIATE JUSTICE WOLF read the court's opinion.

Antonio A. Roig sold a certain parcel of land to the Municipality of Humacao on May 25, 1935. Afterward the Treasurer of Puerto Rico attempted to collect the taxes on this land for the fiscal year 1935-36 amounting to \$77.70. Under threat of embargo. Roig found himself compelled to pay the \$77.70 under protest, and immediately began the present litigation. His principal claims were that the taxes on the land constitute a preferred lien on the property itself, and that the Municipality of Humacao was the owner of the land at the time for the payment of taxes on July 1, 1935.

The Treasurer of Puerto Rico filed a demurrer for want

of cause of action, which was overruled. And on motion of the Treasurer defendant, judgment was entered [on the pleadings] in favor of the claimant for the sum mentioned together with interest from the date of the filing of the demand.

The sole error which it is necessary for us to consider is the determination of the court that the claim sufficiently stated a cause of action; and that therefore the judgment is erroneous.

The legal question involved in this case is whether a person who sells a parcel of real estate to someone or to a municipality before the first day of July of any year is thereby relieved from personal responsibility for the payment of the real estate taxes for the following fiscal year. Antonio A. Roig sold the property on the 25th of May 1935. The contention that the property is subject to a preferred lien in favor of the Treasurer is not decisive, and does not absolutely exempt him from a personal responsibility. The fact that the Municipality of Humacao is exempt from the payment of taxes is likewise just as little necessarily conclusive as to the appellee being exempt from the responsibility.

The questions raised in this case have been plainly decided by our decision in the case of *Asociacion de Maestros de Puerto Rico v. Treasurer*, (*ante*, page 536). The only difference between that case and the present is that in that case the Asociacion claimed an exemption of responsibility based on it being claimed to be exempt from the payment of taxes, in accordance with article 291 of the Political Code, when its building was dedicated to educational purposes in the month of April 1935. Likewise it refused to pay the taxes for the fiscal year 1935-36, and paid them only under protest. In deciding that case against the Asociacion this tribunal said:

"In cases of sales to purchasers who in themselves are exempt from the payment of taxes it has resulted that the owner of the property at the time of the assessment remains personally responsible for the pay-

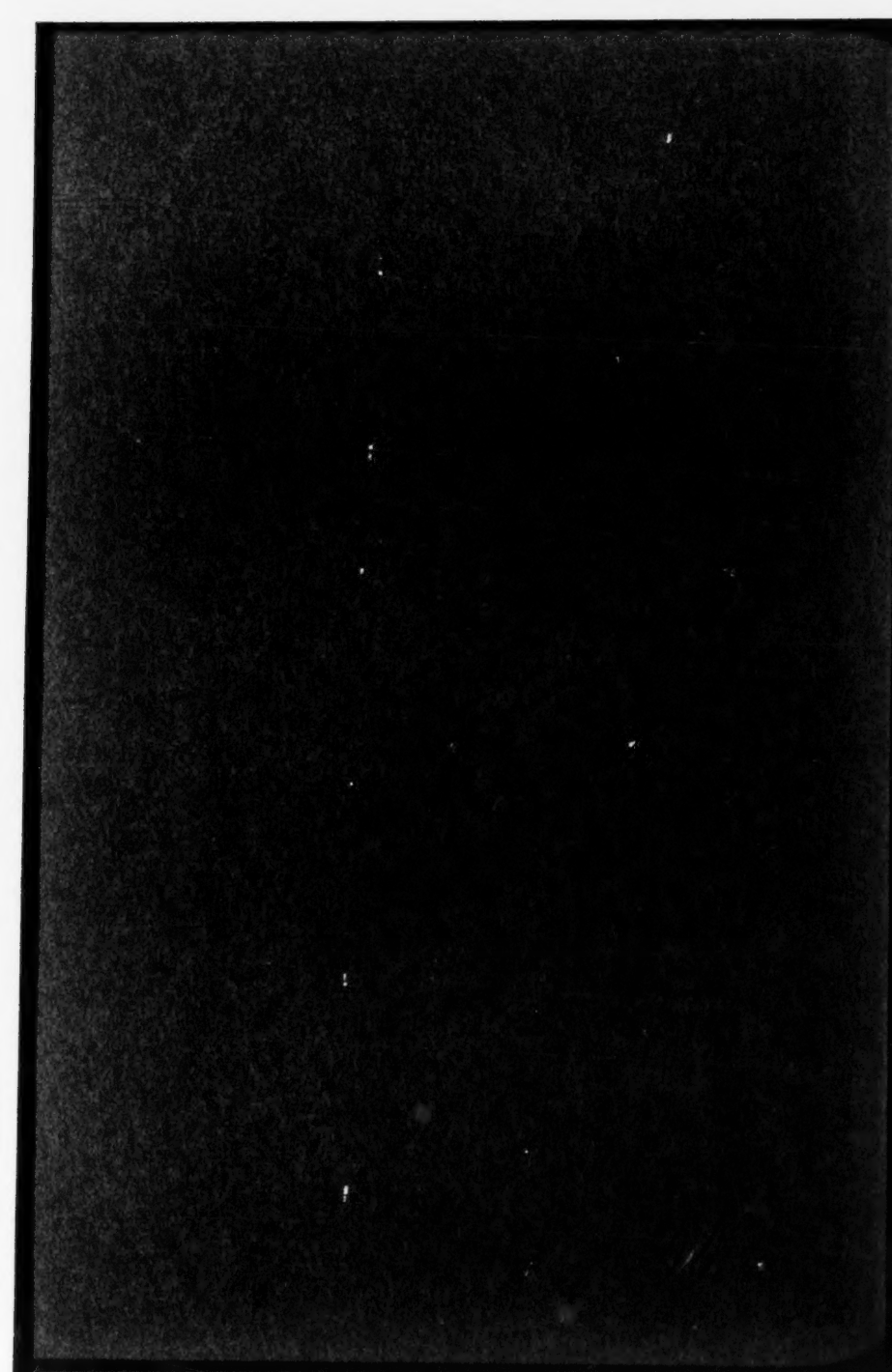
ment of the taxes imposed on the property. The Attorney General of Porto Rico at one time handed down an opinion to that effect. 14 Ops. Attorneys General [of Puerto Rico] 448. See also *Gloster Lumber Co., Inc. v. Adams County*, 163 So. 541; *Buckout v. City of New York*, 82 App. Div. 218 (N. Y.); *Prytania St. Market Co. v. City of New Orleans*, 110 La. 835, 34 So. 797; *Wood v. McCook Waterworks Co., et al.*, 149 N. W. 417" and other authorities.

Then we proceeded to quote from the case of *Wood v. McCook Waterworks Co.*, *supra*.

Therefore we are of opinion that when Antonio A. Roig sold the property to the Municipality on May 25, 1935, the taxes for 1935-36 had already been imposed on it against him, and that he was personally responsible for their payment.

Appellant has also raised the question of jurisdiction based on the fact that the complaint originally involved only the sum of \$77.70, and that in consequence, in conformity with the rule of the case of *Serralles v. Treasurer*, 53 D.P.R. 650, it should have been presented to the municipal court. We are not sure but that this case would have been covered by the same principle expressed by this court in its opinion in the case of *A. Cuesta & Co. v. Sancho Bonet* (*ante*, page 87), but, however that may be, it is not necessary to decide that question here since in any event this case has to be reversed.

The judgment below must be reversed, without any order as to costs.



In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 714

PEOPLE OF PUERTO RICO, PETITIONER

v.

UNITED STATES OF AMERICA, GONZALES HERMANOZ,
AND MARTINEZ & Co., S. EN C.

No. 715

PEOPLE OF PUERTO RICO, PETITIONER

v.

UNITED STATES OF AMERICA, ARTURO BRAVO Y
NIEVES AND CHRISTINA ACEVEDO BARRETO, HIS
WIFE

*ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FIRST
CIRCUIT*

MEMORANDUM FOR THE UNITED STATES

Throughout these proceedings the United States, though nominally a party, has maintained a neutral position on the issue presented in these cases. The sole question is whether under the laws of

Puerto Rico a lien for real property taxes attaches on January 15 or on July 1. If the former is the case, taxes are due on property condemned by the United States in May but the amount thereof is to be satisfied out of funds deposited as estimated compensation for the land or out of whatever amount is ultimately determined to be just compensation. If the latter is the case, no taxes are payable on property so condemned. In either case the United States has no financial interest in the question involved. cf. *United States v. Certain Lands in Borough of Brooklyn*, 129 F. 2d 577, 579 (C. C. A. 2).

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

NORMAN M. LITTELL,
Assistant Attorney General.

MARCH 1943.

